

# In the United States Patent and Trademark Office

In re the Application of:

Leland James Wieschuegel	)	
Serial Number: 09/773,197	)	Group:3679
Docket Number: AUS920000945US1	)	Examiner: Eric K. Nicholson
Filed on: 01/31/2001	)	
For: "Dynamic Catalog for On-Line Offering and Bid System"	)	

## APPEAL BRIEF

*(Second Reinitiation)*

### ***Real Party in Interest per 37 CFR §41.37(c)(1)(i)***

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

### ***Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)***

No decision from a court or the Board has been rendered in the related appeal of related US Patent Application number 09/714,726, docket number AUS9-2000-0736-US1.

### ***Status of Claims per 37 CFR §41.37(c)(1)(iii)***

Claims 1 - 15 are finally rejected. The rejections of Claims 1 - 15 are appealed.

### ***Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)***

The claims were amended on August 30, 2006, in order to comply with certain wording changes required by the examiner to clarify indefinite articles, and to bring recitation of plural elements in to agreement.

***Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)***

The present invention provides a method and system for creating and updating electronic information sets regarding available products for bid or purchase through an online auction or bidding system (pg. 10, line 17 - 19), collectively referred to as an Interactive Offer System.

Independent Claim 1 sets forth a method in which:

- (1) at least two repositories of information sets and data items are provided, at least one of said repositories being indexed to part number and manufacturer identifier (*pg. 13 lines 6 - 9, pg. 14 lines 1 - 5; Fig. 4 #60, #70, #71, and #609*);
- (2) the information sets and data items are dynamically (*pg. 13 lines 16 - 18*) linked to said part numbers and manufacturer identifiers for available products by executing a synchronization script or program (*pg. 13, lines 11 - 18*), said execution being triggered at a predetermined time or responsive to a predetermined event (*pg. 13 lines 4 - 6, pg. 14, lines 7 - 9*);
- (3) then, responsive to receipt of a request by a trader, the contents of a Sales Preparation System are synchronized with the repositories such that all information sets and data items within all repositories represent full information sets of most recently created data items, including the contents of said Sales Preparation System (*pg. 14, lines 10 - 16*);
- (4) the synchronized Sales Preparation System contents are then promoted to an online auction system responsive to authorization of the trader (*pg. 14, lines 14 - 19*); and
- (5) the promoted contents are displayed or presented to one or more online bidders via an online auction system (*pg. 14, lines 19 - 20*).

Claim 6 sets forth a computer-readable medium encoded with software for performing steps in which:

- (1) at least two repositories of information sets and data items are provided, at least one of said repositories being indexed to part number and manufacturer identifier (*pg. 13 lines 6 - 9, pg. 14 lines 1 - 5; Fig. 4 #60, #70, #71, and #609*);
- (2) the information sets and data items are dynamically (*pg. 13 lines 16 - 18*) linked

- to said part numbers and manufacturer identifiers for available products by executing a synchronization script or program (*pg. 13, lines 11 - 18*), said execution being triggered at a predetermined time or responsive to a predetermined event (*pg. 13 lines 4 - 6, pg. 14, lines 7 - 9*);
- (3) then, responsive to receipt of a request by a trader, the contents of a Sales Preparation System are synchronized with the repositories such that all information sets and data items within all repositories represent full information sets of most recently created data items, including the contents of said Sales Preparation System (*pg. 14, lines 10 - 16*);
  - (4) the synchronized Sales Preparation System contents are then promoted to an online auction system responsive to authorization of the trader (*pg. 14, lines 14 - 19*); and
  - (5) the promoted contents are displayed or presented to one or more online bidders via an online auction system (*pg. 14, lines 19 - 20*).

And, Claim 11 sets forth a system for accomplishing the objectives of the invention having:

- (1) at least two computer-readable repositories of descriptive data items, at least one of said repositories being indexed to part and manufacturer identifiers (*pg. 13 lines 6 - 9, pg. 14 lines 1 - 5; Fig. 4 #60, #70, #71, and #609*);
- (2) a plurality of dynamic links between descriptive data items and product part numbers and manufacturer identifiers, said links being established by executing a synchronization script or program, said execution being triggered at a predetermined time or responsive to a predetermined event (*pg. 13 lines 4 - 6, 16 - 18, and 11 - 18; pg. 14, lines 7 - 9*);
- (3) a repository synchronizer which, responsive to a request from a trader, dynamically updates links to the descriptive data items, replaces links to older data items with links to newer data items, and adds links to data items which were not previously available (*pg. 14, lines 10 - 16*);
- (4) an offer promoter for promoting said synchronized Sales Preparation System contents to an online auction system responsive to authorization of said trader

(pg. 14, lines 14 - 19); and

- (5) a user interface to an Interactive Offer System adapted to present said synchronized Sales Preparation System contents to one or more online bidders via said online auction system (pg. 14, lines 19 - 20).

***Grounds For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)***

Review by the Board is requested of the final decision by the Examiner to deny a patent to Appellants on the grounds of:

- (a) objection to the disclosure and Figures 3 and 4 with respect to the terminology and naming convention of a Parts Catalog, including a database;
- (b) objection to the disclosure and Figures 3 and 4 with respect to the terminology and naming convention of a Sale Preparation System (SPS), including a database;
- (c) objection to the disclosure and Figures 3 with respect to the terminology and naming convention of an Interactive Offer Server (IOS), including a database;
- (d) objections to the drawings for failing to show every feature of the invention specified in the claims, specifically "two-computer readable repositories", an "offer description creator", and an "offer list creator";
- (e) objection to the specification for failing to provide proper antecedent bases for the claimed elements, steps, or limitations of "repositories of information sets", "computer-readable repositories of descriptive data items", "offer description creator", and "offer list creator";
- (f) rejections of Claims 1 - 10 under 35 U.S.C. §112, first paragraph, with respect to description of dynamically linking information sets, manufacturer identifiers, and part numbers;
- (g) rejections of Claims 11 - 15 under 35 U.S.C. §112, first paragraph, with respect to description of dynamically linking information sets, descriptive data items and part numbers, but not for linking to manufacturer identifiers;
- (h) rejections of Claims 1 - 13 under 35 U.S.C. §112, second paragraph, for indefiniteness with respect to:
  - 1. the recitation of the phrase "upon request by a trader" in claims 1 and 6,
  - 2. the recitation of "executing a synchronization script or program" which "dynamically links . . . ",
  - 3. the "contents of a Sales Preparation System",
  - 4. whether or not any "repositories" are "double includ[ed]" in the claims;
  - 5. whether or not any repositories or databases "synchronize to themselves";

6. how saving a copy of an information set statically links the copy to the most created data items, and where the copy is saved?
  7. whether or not certain components of the system claimed are physical components, possibly levying a requirement to include a memory component in which a software or data record must exist;
  8. how adapting a synchronizer to replace and add links on a timed basis "limits the system"; and
  9. how adapting a synchronizer to replace and add links responsive to a request for information from a repository "limits the system";
- (i) the rejections of Claims 1 - 15 under 35 U.S.C. §102(e) as being anticipated by published U.S. patent application 2003/0009392 to Perkowski (hereinafter "Perkowski").

As will be shown in the following Arguments section, the Board has proper jurisdiction over all of these objections and rejections.

*Arguments per 37 CFR §41.37(c)(1)(vii)*

**(A) Objection Regarding the "Parts Catalog" Description and Illustration**

In the Final Office Action, the examiner has denied Appellants right to a patent for the claimed invention based in part on objection to the Disclosure and Figures 3 and 4 with respect to the terminology and naming convention of a Parts Catalog, including a database. The Board has jurisdiction over this decision for the following reasons:

- (1) the Board has jurisdiction over the examiner's decision to finally deny the patentability of this patent application because some of the claims have been rejected at least twice or have been finally rejected (e.g. this application has been finally rejected three times, and twice reopened for examination by the examiner) (35 USC 134);
- (2) All of the objections relate to statutory requirements for the disclosure to support the claims, and the drawings, if necessary, to illustrate the invention. The objections are not limited to rules or Office procedure, and they are not limited to the examiner's need for further information regarding the objectives of the invention or the gist of the invention, whereas examiner has stated the ability to assume the meaning of the claims for the purpose of examination (e.g. the examiner has indicated an understanding of the invention as described, illustrated, and claimed, through assumption of the claim interpretations for examination purposes) (*Ex parte C*, 27 USPQ2d 1492, 1494 (B.P.A.I. 1993); and
- (3) the rationale for the objections, and weighing of both the examiner's arguments and the appellants arguments, require exercise of technical skill and legal judgement, as will be shown in the following paragraphs, and thus, the objection is appealable (*In re Searles*, 422 F2d 431, 164 USPQ 623 (CCPA 1970).

In the rationale for the objection, the examiner pointed out that the description of feature 609 names the feature a "parts catalog database", but that Figures 3 and 4 label feature 609 simply as "parts catalog". It should be noticed, however, that the symbol used for feature 609 in

Figures 3 and 4 is that of a database or data storage device, commonly informally referred to as a "soup can" symbol. Additionally, it is not outside the skill of those in the art to understand and correlate a "parts catalog database" and a "parts catalog" to each other.

The rationale for the objection is in error because it does not fully consider the symbols employed in the figures. For these reasons, Appellants request the Board to overrule this objection which denies patentability of the claims.

**(B) Objection Regarding the "Sales Preparation System" Description and Illustration**

In the Final Office Action, the examiner has denied Appellants right to a patent for the claimed invention based in part on objection to the Description and Figures 3 and 4 with respect to the terminology and naming convention of a "Sales Preparation System", including a database. The Board has jurisdiction over this decision for the same reasons as stated in argument (A) above.

In the rationale for the objection, the examiner pointed out that the description of feature 60 and Figure 3 names the feature a Sales Preparation System (SPS), but that Figure 4 labels feature 60 as "SPS Database". It should be noticed, however, that the symbol used for feature 60 in Figures 3 and 4 is that of a database or data storage device, commonly informally referred to as a "soup can" symbol. As such, Figures 3 and 4 agree with each other. Further, the disclosure at page 11, line 17, discloses that "SPS (60) contains a database . . .". As such, the description agrees with Figures 3 and 4.

Additionally, it is not outside the skill of those in the art to understand and correlate a "Sales Preparation System (SPS) which contains a database" and a "SPS database" to each other.

The rationale for the objection is in error because it does not fully consider the symbols employed in the figures and the entirety of Appellants' disclosure. For these reasons, Appellants request the Board to overrule this objection which denies patentability of the claims.

**(C) Objection Regarding the Interactive Offer Server Description Description and Illustration**

In the Final Office Action, the examiner has denied Appellants right to a patent for the claimed invention based in part on objection to the Description and Figure 3 with respect to the terminology and naming convention of an "Interactive Offer Server", or IOS, including a

database. The Board has jurisdiction over this decision for the same reasons as stated in argument (A) above.

In the rationale for the objection, the examiner pointed out that the Description names feature 62 an "IOS Database", but that Figure 3 shows feature 62 as "IOS". It should be noticed, however, that the symbol used for feature 62 in Figure 3 is that of a database or data storage device, commonly informally referred to as a "soup can" symbol. Thus, the Description and the illustration agree with each other.

Additionally, it is not outside the skill of those in the art to understand and correlate a "IOS database (62)" with a database element in Figure 3 having the reference number 62 and labeled "IOS".

The rationale for the objection is in error because it does not fully consider the symbols employed in the figures and the entirety of Appellants' disclosure. For these reasons, Appellants request the Board to overrule this objection which denies patentability of the claims.

#### **(D) Objections to the Drawings**

In the Office Action, the examiner has denied Appellants right to a patent for the claimed invention based in part on objections to the drawings for failing to show every feature of the invention specified in the claims, specifically "two-computer readable repositories", an "offer description creator", and an "offer list creator". The Board has jurisdiction over this decision for the same reasons as stated in argument (A) above.

Additionally, the Board has jurisdiction over this decision as these objections were previously made in the Office Action dated 11/18/2005, to which the applicant replied with the following remarks. However, in the subsequent and final Office Action, the examiner has not responded to these remarks or arguments made by the Appellants. As such, the examiner has failed to "reexamine" the application responsive to applicants' request, as required by 35 U.S.C. §132(a). Failure to follow this statutory requirement renders this objection within the jurisdiction of the Board.

In the previous reply regarding these objections raised by the examiner, applicants pointed out that in the previous four Office Actions, no objections to the figures for missing these claimed features were made by Primary Examiner Nicholson. These features were present in the claims as originally filed, and thus were subject to consideration by Primary Examiner

Nicholson and are part of the original disclosure. Applicants requested reconsideration of the objections consistent with and giving full faith and credit to the previous examiner's position (MPEP 706.04), and in recognition of the fact that the first Office Action was complete and thorough, as required by 37 C.F.R. § 1.104(a) and (b).

Additionally, Applicants pointed out that these items are indeed shown in the Figures, as required by 37 CFR §1.83(a) (emphasis added by applicant), as conventional features may be represented without details using a graphical drawing symbol:

**§ 1.83 Content of drawing.**

- (a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

With respect to showing in a figure the feature of “two computer-readable repositories”, Figure 3 shows three databases (#62, #60, #609), and figure 4 shows two databases (#60, #609), using the well-known iconic “soup can” representation for a database or database server (e.g. a computer running a program for allowing access to and management database contents).

With respect to showing in a figure the feature of “the offer description creator”, Figure 3 shows a single-headed arrow flowing from the SPS (#60) to the trader console (#61) which represents (and is clearly labeled) “part numbers, links to descriptive information, descriptive information data items”. The information represented by this arrow is produced by the SPS (#60) responsive to the trader's request for up-to-date catalog information in order to prepare an offer (pg. 14 lines 10 - 20). Thus, the functionality shown in the graphical icon for an SPS, as described, is in part an “offer description creator”. Figure 4 concurs with this process, showing in more detail that in Phase 1 the SPS (#60) loads item information (#70), and supplies the most current information responsive to a trader request (#73, #74) in Phase 2, following which this

information is captured into the offer (75) in Phase 3.

With respect to showing in a figure the feature of an "offer list creator", Figure 3 shows the SPS (#60) which provides available materials lists containing manufacturer identifiers and part numbers (pg. 11, lines 11 - 16). The SPS is disclosed in one embodiment as being a Lotus Notes System, which is generally known to those skilled in the art as a computer system running a specific database program product produced by Lotus, a division of IBM.

Block diagram symbols such as these, when combined with suitable disclosure and/or flowcharts, such as our disclosure and Figure 4, are acceptable and enabling for computer-related inventions, as set forth in MPEP 2106.02.

For these reasons, the decision to deny Appellants' patent rights to the invention over an objection to the drawings without consideration or counter-argument of Appellants' previous assertions regarding disclosure and illustration features is in error. Appellants request the Board to overrule these objections.

#### **(E) Objection to Specification for Lack of Antecedent Basis**

In the Office Action, the examiner has denied Appellants right to a patent for the claimed invention based in part on objections to the specification for failing to provide proper antecedent bases for the claimed elements, steps, or limitations of "repositories of information sets", "computer-readable repositories of descriptive data items", "offer description creator", and "offer list creator".

The Board has jurisdiction over this decision for the same reasons as stated in argument (A) above. Additionally, the Board has jurisdiction over this decision as these objections were previously made in the Office Action dated 11/18/2005, to which the applicant replied with the following remarks. However, in the subsequent and final Office Action, the examiner has not responded to these remarks or arguments made by the Appellants. As such, the examiner has failed to "reexamine" the application responsive to applicant's request, as required by 35 U.S.C. §132(a). Failure to follow this statutory requirement renders this objection within the jurisdiction of the Board.

In the previous four Office Actions, no objections to the specifications for missing these claimed features were made by Primary Examiner Nicholson. These features were present in the claims as originally filed, and thus were subject to consideration by Primary Examiner Nicholson

and are part of the original disclosure. Appellant requested reconsideration of the objections consistent with and giving full faith and credit to the previous examiner's position (MPEP 706.04), and in recognition of the fact that the first Office Action was complete and thorough, as required by 37 C.F.R. § 1.104(a) and (b).

Additionally, Appellant submitted that these terms have proper antecedent bases in the disclosure as follows:

- (1) "repositories of information sets", as used in Claim 1, refers to portions of electronic catalogs (see claim 1 preamble), wherein each information set contains electronic information for products available for bid or purchase including descriptive and illustrative data items for those products, as set forth in the disclosure as "descriptive information" (pg. 8 lines 2 - 20; pg. 11 lines 17 - 19; etc.), and wherein the term "repository" refers to electronic repositories (e.g. it is a repository of information sets which are electronic catalogs), consistent with the term as used widely in the art, evidenced by the definition provided by the Information Technology reference website <http://www.whatis.com>:

**repository** In information technology, a repository (pronounced ree-PAHZ-ih-tor-i) is a central place in which an aggregation of data is kept and maintained in an organized way, usually in computer storage. The term is from the Latin *repositorium*, a vessel or chamber in which things can be placed, and it can mean a place where things are collected. Depending on how the term is used, a repository may be directly accessible to users or may be a place from which specific databases, files, or documents are obtained for further relocation or distribution in a network. A repository may be just the aggregation of data itself into some accessible place of storage or it may also imply some ability to selectively extract data. Related terms are data warehouse and data mining. (Source: <http://www.whatis.com>)

- (2) "computer-readable repositories of descriptive data items", as used in Claim 11, refers to electronic storage of electronic information about products and services available for bid, as previously described in (a) regarding "repositories of information sets";
- (3) "offer description creator", as used in claim 14, refers to the function of the SPS which produces up-to-date product description information from the multiple repositories responsive to a trader's request, during the 3-phase process of preparing an offer, as previously described in the Applicant's remarks regarding the objection to the figures for not showing the feature of "the offer description creator"; and
- (4) "offer list creator", as used in claim 15, refers to the function of the SPS which produces a list of available products or services which a trader may offer up for bid, as previously described in the Applicant's remarks regarding the objection to the figures for not showing the feature of "offer list creator".

For these reasons, the decision to deny Appellants' patent rights to the invention over these objections to the specification for lack of antecedent basis without consideration or counter-argument of Appellants' previous assertions regarding disclosure and illustration features is in error. Appellants request the Board to overrule these objections.

**(F) Rejections of Claims 1 - 10 under 35 U.S.C. §112, First Paragraph, Regarding Dynamically Linking to "Information Sets"**

In the Office Action, Claims 1 - 10 were finally rejected under 35 U.S.C. §112, first paragraph, reasoning that the specification did not convey to one skilled in the art that the inventors had possession of the claimed invention with respect to description of dynamically linking information sets, manufacturer identifiers, and part numbers. The examiner has specifically noted that nowhere in the specification is a mention of "information sets" found.

This, however, is untrue, as evidenced by the following excerpts taken from Appellants' disclosure (emphasis added by Appellant):

According to the preferred embodiment, the invention integrates to the current IOS via the SPS. A cataloger (604) collects or receives current product descriptive

information and places it into the SPS database as it is available, as is it may need to be updated. Initially, if no descriptive information is contained in SPS for a particular part number, the cataloger (604) may be tasked to photograph the item, find current specifications for the item, etc. These descriptive information items (605, 606 and 607) are then loaded into SPS to form an initial set of descriptive information which is dynamically linked to the part number and manufacturer identifier. (Pg. 12, lines 3 - 14)

As such, "information sets" as recited in the claims is directly referring to "set of descriptive information", as disclosed. This is further supported by the language which describes the "set of descriptive information" as being dynamically linked to the part number or the manufacturer identifier.

There is, therefore, proper antecedent basis in the description. Appellants request reversal of these rejections.

**(G) Rejections of Claims 11 - 15 under 35 U.S.C. §112, First Paragraph, with Respect to Description of Dynamically Linking to "Manufacturer Identifiers"**

In the Office Action, Claims 11 - 15 were rejected under 35 U.S.C. §112, first paragraph, reasoning that the specification did not convey to one skilled in the art that the inventors had possession of the claimed invention with respect to description of dynamically linking information sets particularly to "manufacturer identifiers".

This, however, is untrue, as evidenced by the following excerpts taken from Appellants' disclosure (emphasis added by Appellant):

... This descriptive information is dynamically linked to the manufacturer identifier and the part number. (Pg. 8, lines 9 - 10)

...

These descriptive information items (605, 606 and 607) are then loaded into SPS to form an initial set of descriptive information which is dynamically linked to the part number and manufacturer identifier. (Pg. 12, lines 8 - 10)

As previously discussed in argument (H) above, "set of descriptive information" is referring to descriptive information items, and as shown from these additional excerpts, links are dynamically made to "manufacturer identifiers".

There is, therefore, proper antecedent basis in the description. Appellants request reversal of these rejections.

**(H) Rejections of Claims 1 - 13 under 35 U.S.C. §112, Second Paragraph, for Indefiniteness**

In the Office Action, Claims 1 - 13 were rejected under 35 U.S.C. §112, second paragraph, for indefiniteness with respect to (1) the recitation of the phrase "upon request by a trader" in claims 1 and 6; (2) the recitation of "executing a synchronization script or program" which "dynamically links . . ."; (3) the "contents of a Sales Preparation System", (4) whether or not any "repositories" are "double includ[ed]" in the claims; (5) whether or not any repositories or databases "synchronize to themselves"; (6) how saving a copy of an information set statically links the copy to the most created data items, and where the copy is saved; (7) whether or not certain components of the system claimed are physical components, possibly levying a requirement to include a memory component in which a software or data record must exist; (8) how adapting a synchronizer to replace and add links on a timed basis "limits the system"; and (9) how adapting a synchronizer to replace and add links responsive to a request for information from a repository "limits the system".

(1) Recitation of the phrase "upon request by a trader" (Claims 1 and 6) was held to be equivalent to an "if statement", which was held not to be concrete. The examiner has not stated what law, rule, or policy prohibits "if statements" in process and method claims.

Our conditional phrase "upon request by a trader", however, is not just an "if requested by trader" statement, but goes further to indicate timing of a step in the claimed process. It is more closely related to "responsive to a request from a trader" interpretation than to an "if requested by trader" interpretation when considered in the light of our specification and drawings. For example, the online dictionary resource [www.dictionary.com](http://www.dictionary.com) shows the following definition for the word "upon" (emphasis added by Appellant):

upon –*preposition*

1. up and on; upward so as to get or be on: He climbed upon his horse and rode off.
2. in an elevated position on: There is a television antenna upon every house in the neighborhood.
3. in or into complete or approximate contact with, as an attacker or an important or pressing

occasion: The enemy was upon us and our soldiers had little time to escape. The Christmas holiday will soon be upon us and we have hardly begun to buy gifts. The time to take action is upon us.

4. **immediately or very soon after:** She went into mourning upon her husband's death.
5. on the occasion of: She was joyful upon seeing her child take his first steps.
6. on (in any of various senses, used as an equivalent of on with no added idea of ascent or elevation, and preferred in certain cases only for euphonic or metrical reasons): He swore upon his honor as a gentleman.

Therefore, since no legal basis for this holding has been entered by the examiner, and because there is no evidence of record to indicate that a conventional interpretation of "upon" to mean "if", and because a review of Appellants' disclosure reveals this interpretation of our recited phrase to be consistent with the specification, these rejections should be reversed.

(2) The recitation of the phrase "executing a synchronization script or program" which "dynamically links . . ." was held to be unclear how this is done. This rejection was repeated from the previous Office Action, to which the Appellants previously replied:

- (a) The step of "synchronizing contents of a Sales Preparation System" is performed conditionally upon the receipt of a request from a trader. The subsequently listed steps in Claim 1 refer to this conditionally-performed step, and thus are conditional themselves. For example, the step of "promoting said synchronized Sales Preparation System contents" refers to "said Sales Preparation System contents" which would not exist if the step of "synchronizing contents of a Sales Preparation System" were not performed previously. Likewise, the next step of "presenting said promoted contents" refers to "said promoted contents", which would not have been promoted if the step of "synchronizing contents of a Sales Preparation System" were not performed previously.
- (b) The output or result of the final step, "presenting said promoted contents to one or more online bidders via said online auction system" necessarily means presenting the output to a human in a tangible form, such as on the display of a trader's console as described in the specification. Such a display is a tangible, concrete, and useful result.

Appellant's also pointed out that general creation and operation of links, such as hyperlinks, is known in the art, as evidenced by US Pat. No. 5,303,379 to Khoyi, cited by the Examiner Nicholson in the first Office Action of 5/27/2003. The term "dynamically linked information" is well understood in the art as information which has links associated between the information, the links being of a temporary or reassignable nature (e.g. not statically linked), such as a modifiable hyperlink. A Google search on the term "dynamically linked information", for example, returns quite a few examples of the term being used by others to described such information.

With respect to the question regarding whether linking and synchronization are the same, it is well known in the art that linking and synchronization are different operations (source: <http://www.whatis.com>):

**link**

1) Using hypertext, a link is a selectable connection from one word, picture, or information object to another. In a multimedia environment such as the World Wide Web, such objects can include sound and motion video sequences. The most common form of link is the highlighted word or picture that can be selected by the user (with a mouse or in some other fashion), resulting in the immediate delivery and view of another file. The highlighted object is referred to as an anchor. The anchor reference and the object referred to constitute a hypertext link.

Although most links do not offer the user a choice of types of link, it would be possible for the user to be provided a choice of link types, such as: a definition of the object, an example of it, a picture of it, a smaller or larger picture of it, and so forth.

...

Webopedia (source <http://www.webopedia.com>) provides another useful explanation as evidence of what is known in the art regarding databases, database systems, and linking information in databases:

**database**

(1) Often abbreviated DB. A collection of information organized in such a way that a computer program can quickly select desired pieces of data. You can think of a database as an electronic filing system.

Traditional databases are organized by fields, records, and files. A field is a single piece of information; a record is one complete set of fields; and a file is a collection of records. For example, a telephone book is analogous to a file. It contains a list of records, each of which consists of three fields: name, address, and telephone number.

An alternative concept in database design is known as Hypertext. In a Hypertext database, any object, whether it be a piece of text, a picture, or a film, can be linked to any other object. Hypertext databases are particularly useful for organizing large amounts of disparate information, but they are not designed for numerical analysis.

To access information from a database, you need a database management system (DBMS). This is a collection of programs that enables you to enter, organize, and select data in a database.

(2) Increasingly, the term database is used as shorthand for database management system.

By contrast, "synchronization" of two or more information sets, such as databases, typically means to copy and/or replace information between the sets so that they contain identical information (e.g. the information is contained in the set, not just pointed to by the links in the set). For example, Wikipedia (source: <http://www.wikipedia.com>) explains file synchronization as follows (emphasis added by application):

### **File Synchronization**

File Synchronization in computing is the process of making sure that two or more locations contain the same up-to-date information. If you add, change, or delete a file from one location, the synchronization process will add, change, or delete the same file from the other location.

File Synchronization can be one-way or two-way. In one-way sync, files are copied only from a primary location (source) to a secondary location (target) in one direction, but no files are ever copied back to the primary location. In two-way sync, files are copied in both directions, keeping the two locations in sync with each other.

Another source, SearchDomino (source: <http://www.searchdomino.techtarget.com>) explains Lotus database synchronization as follows (emphasis added by application):

**Lotus Notes/Domino replication: A primer for administrators**

...

Replication is the process of **synchronizing** more than one copy of a Notes database. The two (or more) copies might be on different servers, or they might be on a personal computer and a server. Synchronization means that **each copy of the database gets the same data.**

As such, in the art, the terms “synchronize” and “link” are not synonymous. Appellants have claimed an enhanced synchronization process which ensures that where data sets include *links* to other sources, those links are dynamically updated in all data sets to point to the same sources (e.g. the *links* within the databases are synchronized, so to speak).

It is within the scope of those ordinarily skilled in the art to understand and practice our invention as described and taking into consideration the knowledge openly held in the art. In the final Office Action, the examiner has not addressed these detailed responses by the Appellants, and thus has failed to reexamine the application as required by 35 U.S.C. §132(a). For these reasons, Appellants request reversal of these rejections.

(3 - 5) It was held that the phrase "contents of a Sales Preparation System" is unclear, and whether or not the SPS was part of the "two or more repositories" recited earlier in the claims, and if so, wouldn't this be a "double inclusion" of the SPS and wouldn't it imply that SPS must synchronize to itself. Appellants respectfully submit that this is an interpretation of the claims not consistent with Appellants disclosure. Appellants have clearly disclosed that the SPS database (60) may automatically synchronize (76) its contents with the contents of other databases, such as the parts database (609), on a periodic basis, such as daily (pg. 14 lines 7 - 9, for example), and that these contents typically include descriptive information such as photographs, text descriptions, specifications, quantities, etc. (pg. 14 lines 3 - 4, for example). So, it is clear *what* the contents of the SPS are.

With respect to it's "double inclusion" in the claims, the examiner has not cited a legal definition or prohibition on "double inclusion", how it is established, and what it constitutes.

The SPS may be one of at least two databases in the system, and if there are only two, then it would be nonsensical to try to synchronize the SPS to the second database and also to itself. However, the phrase "at least two repositories of information sets and data items" also allows for 3, 4, or even more total databases, only one of which may be an SPS. In this embodiment covered by the claims, the step recited to synchronize to the other databases (plural) is accurate and clear.

Whereas the contents of the SPS have been clearly described, whereas there is no doctrine, rule, or law establishing "double inclusion", and whereas the claim language sensibly sets forth scope encompassing a range of embodiments as allowed by law, these rejections are improper. Appellants request withdrawal of these rejections for these reasons.

(6) It was held that it is unclear *how* saving a copy of an information set statically links the copy to the "most created data items, and where the copy is saved?". From the wording of this rejection, Appellants do not understand what "most created data items" means. Is examiner meaning "most *recently* created", "most *often* created"? Title 35 U.S.C. 132(a) requires 35 U.S.C. 132 "[w]henever, on examination, any claim for a patent is rejected, . . . the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application". Because the required reasons and information are not provided to understand the rejection, Appellants request reversal of the rejection.

Further, with respect to the question *where* the copy is saved, there is no statutory requirement to claim where data copies are saved unless they are an element, step, or limitation which patentably distinguish the claims from the prior art. With respect to a preferred embodiment, the Appellants have answered this question in a previous reply by stating that those skilled in the art of information technology would be free to provide two (or more) repositories in any "location" they wish using available networking technologies, as the invention is not dependent on co-located computer resources.

As such, the cited step, elements, and limitations are clearly set forth as required by 35 USC §112, second paragraph, and the initial burden to factually support a rejection under this paragraph have not been met. Appellants request reversal of these rejections.

(7) It was held that in Claim 11 it was not clear whether or not certain components of

the system claimed are physical components, such as electronics, or whether they are "merely electronic databases". In the rationale, it was implied that "databases" must be residing in memory in order to exist, and presumably in order to be patentable. However, this confuses "data" with "databases", the former being an abstract set of values, and the latter being systems and products well known in the art to be computer applications, programs, and data structures which can hold, retrieve, and manipulate data. The examiner has not offered in the rationale any evidence to support a holding of "databases" being abstract "data" devoid or separate from computer hardware, programs, or the like.

For these reasons, the rationale for these rejections is in error for failing to interpret the claims in light of the specification and in accordance with definitions well known in the art or provided by the specification. Appellants request reversal of these rejections.

(8 - 9) It was also held that it was unclear how adapting a synchronizer to replace and add links on a timed basis, and how adapting the synchronizer to add or replace links responsive to a request for information further "limits the system", as recited in claims 12 and 13, respectively. Specifying additional elements, steps, and limitations are not intended to "limit the system", *per se*, but are recited in claims 12 and 13 to further limit the *scope of the claims* from which they depend, of course. Because Claim 12 depends from Claim 11, the addition of further adapting the synchronizer on a *timed basis* adds additional functionality included in the open-form claim (e.g. "comprising . . ."), and thus by definition further limits the scope of claim 11. Because Claim 13 depends from Claim 11, likewise, specifying that the synchronizer is also adapted to update links responsive to *any* request for information from the repositories, *in addition* to being adapted to perform link updates responsive to requests from traders.

For these reasons, these rejections are improper, and Appellants therefore request their reversal.

**(I) Rejections under 35 U.S.C. §102(e) over Perkowski**

In the Office Action, rejections of Claims 1 - 15 were maintained from the previous Office Action under 35 U.S.C. §102(e) as being anticipated by published U.S. patent application 2003/0009392 to Perkowski (hereinafter “Perkowski”). Whereas previous rejections over Perkowski, albeit using somewhat different rationale, were appealed but examination was reopened, applicant maintains all previously-made arguments against rejections over Perkowski.

More specifically in response to the later rationale regarding Perkowski, Appellants pointed out that the overall operation of Perkowski, however, is that their links are created and updated manually, not automatically as we have claimed using our synchronization scripts. Further, Perkowski discloses normal database synchronization operations (e.g. copying data between databases), but does not disclose updating links within those databases in the manner we have disclosed and claimed.

Perkowski provides a system in which the “links” between information items in a catalog are updated manually, such as by system administrators (e.g. Perkowski para. 0496 states dynamic changes in relationships are “carried out by a system administrator or manager”). Perkowski discloses “conventional data synchronization techniques” (para. 00437) which copy items (e.g. “import”) from one database to another such that all databases contain the same information after synchronization (para. 0840 where data items are “imported” during synchronization). A “conventional” definition of “data synchronization” can be found at database ITToolBox.com, for example:

Database Administration > Merging/Synchronizing

...

Sub-topic definition: Merging or synchronizing data includes collecting and combining records from individual databases and transferring them into one master database from which all the data can be retrieved.

(Source: <http://www.http://database.ittoolbox.com/nav/t.asp?t=445&p=445&h1=445>)

As such, the links of the Perkowski ‘392 system and method are relatively static in nature until manually modified, changed or updated, or until information is copied from each database to each other database.

Appellants' system, by contrast, is transactional in nature, wherein the links between databases are updated in real time or on-demand (e.g. our definition of "dynamically") either in response to a specific event, such as a trader requesting sales preparation information, or upon a certain update period. In other words, our system is event-driven and automated such that all catalog information is updated on-demand without the need for human link creation or modification, as disclosed especially at pg. 12 lines 20 - 22, pg. 13 lines 4 -6 and lines 16 - 18 of our specification.

Claims 1, 6, and 11 emphasize this definition of "dynamic" by reciting "by executing a synchronization script or program triggered at predetermined time or responsive to a predetermined event". Perkowsky is silent as to such script triggering and execution *to modify links*.

In the most recent Office Action, in the rationale for the final rejections over Perkowsky, the examiner has responded to these arguments by asserting that "Perkowsky uses the terms 'automatically' and 'continuously' through the use of the RDBMS" in paragraphs 0049, 0073, 0080, and especially in paragraphs 0085 and 0988. Examiner especially notes that the rationale for the rejection relies upon all the databases in the RBDMS.

It should be noticed, however, that paragraph [0049] only discloses that each database is "continuously maintained", but it does not say that it is continuously maintained by an automatic synchronization script which dynamically links information as Appellants have claimed. It simply states "continuously maintained", which also fits Appellants interpretation of "continuously <manually> maintained".

It should be noticed as well in paragraph [0073] that while an object of Perkowsky's invention is to automatically generate data link tables, that this same paragraph states "thereby enabling consumers (e.g. readers) to link from print-media to corresponding Web-based media using the UPNs printed on the documents and the link . . ." Clearly, it is the "consumers" who are humans who are "enabled" to "link" from reading the printed UPN codes, which is again, involving manually performed steps.

Paragraph [0080] describes automatic generation of sets of links which are stored in the RDBMS, and ultimately transported also to another system, but does not describe dynamically linking *between* databases in the manner Appellants have claimed. Instead, Perkowsky's links are *exchanged* by transporting the "set of data links" from one system to another.

Paragraph [0085], which was especially noted by the examiner as anticipating this claim aspect, is actually silent as to updating *dynamic links*, but instead describes updating UPC numbers, trademarks, and product-descriptors. The items which are being updated in this paragraph are "descriptive information", but not links.

Paragraph [0988] which was also especially noted by the examiner as anticipating this claim aspect is describing a clearly manually-performed process by an "author" in which the author initiates a "data linking mode", and creates links by "drawing graphical boundaries around the content . . . using a mouse-pointing device" or "drawing a graphical link between" Web and print-media documents, etc. These user actions of "drawing" with a mouse result in creation of links, but the operation remains manually triggered and manually specified.

For these reasons, Perkowski fails to anticipate all steps, elements, and limitations of Appellants claims, and these rejections should be reversed.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Frantz". The signature is written in a cursive style with a vertical line on each side.

Robert H. Frantz, Reg. No. 42,553  
Agent for Appellants      Tel: (405) 812-5613  
**FRANKLIN GRAY PATENTS, LLC**

**Claims Appendix**  
*per 37 CFR §41.37(c)(1)(viii)*

**Clean Form of Amended Claims**

Claim 1 (previously presented):

A method for providing electronic catalogs of information sets regarding available products for bid or purchase through an online auction or bidding system collectively referred to as an Interactive Offer System, said method comprising the steps of:

    providing at least two repositories of information sets and data items, at least one of said repositories being indexed to part numbers and manufacturer identifiers;

    dynamically linking said information sets and data items to said part numbers and said manufacturer identifiers for available products by executing a synchronization script or program, said execution being triggered at a predetermined time or responsive to a predetermined event;

    upon request by a trader, synchronizing contents of a Sales Preparation System with said repositories such that said information sets and said data items within said repositories represent full information sets of most recently created data items, including the contents of said Sales Preparation System;

    promoting said synchronized Sales Preparation System contents to an online auction system responsive to authorization of said trader; and

    presenting said promoted contents to one or more online bidders via said online auction system.

Claim 2 (previously presented):

The method as set forth in Claim 1 wherein said predetermined time comprises a time determined according to a periodic basis.

Claim 3 (currently amended):

The method as set forth in Claim 1 wherein said predetermined event comprises [[and]]  
an event of a request for said information sets in any of the repositories.

Claim 4 (previously presented):

The method as set forth in Claim 1 further comprising the step of providing a list to a user, said list having part numbers and dynamic links to said information sets and data items associated with listed part numbers.

Claim 5 (original):

The method as set forth in Claim 1 further comprising the step of saving a copy of an information set linked to a part number such that said saved copy is statically linked to said most recently created data items.

Claim 6 (previously presented):

A computer readable medium containing program code for providing electronic catalogs of information sets regarding available products for bid or purchase through an online auction or bidding system collectively referred to as an Interactive Offer System, said program code when executed by a computer causing the computer to perform the steps of:

providing at least two repositories of information sets and data items, at least one of which being indexed to manufacturer identifiers and part numbers;

dynamically linking said information sets and data items to said part numbers and said manufacturer identifiers for available products by executing a synchronization script or program, said execution being triggered at a predetermined time or responsive to a predetermined event;

upon request by a trader, synchronizing contents of a Sales Preparation System with said repositories such that said information sets and said data items within said repositories represent full information sets of most recently created data items, including the contents of said Sales Preparation System;

promoting said synchronized Sales Preparation System contents to an online auction system responsive to authorization of said trader; and

presenting said promoted contents to one or more online bidders via said online auction system.

Claim 7 (previously presented):

The computer readable medium as set forth in Claim 6 wherein said predetermined time comprises a time determined on a periodic basis.

Claim 8 (previously presented):

The computer readable medium as set forth in Claim 6 wherein said predetermined event comprises a request for said information sets in any of the repositories.

Claim 9 (original):

The computer readable medium as set forth in Claim 6 further comprising program code for performing the step of providing a list to a user, said list having part numbers and dynamic links to said information sets and data items associated with said listed part numbers.

Claim 10 (original):

The computer readable medium as set forth in Claim 6 wherein said program code further comprises program code for saving a copy of an information set linked to a part number such that said saved copy is statically linked to said most recently created data items.

Claim 11 (previously presented):

A system for providing a dynamic online listing of information regarding items available for purchase or bid through an online auction system, comprising:

at least two computer-readable repositories of descriptive data items, at least one of said repositories being indexed to part numbers and to manufacturer identifiers;

a plurality of dynamic links between said descriptive data items, said part numbers and said manufacturer identifiers, said links being established by executing a synchronization script or program, said execution being triggered at a predetermined time or responsive to a predetermined event;

a repository synchronizer which, responsive to a request from a trader, dynamically updates links to the descriptive data items, replaces links to older data items with links to newer data items, and adds links to data items which were not previously available;

an offer promoter for promoting said synchronized Sales Preparation System contents to an online auction system responsive to authorization of said trader; and a user interface to an Interactive Offer System adapted to present said synchronized Sales Preparation System contents to one or more online bidders via said online auction system.

Claim 12 (previously presented):

The system as set forth in Claim 11 wherein said repository synchronizer is further adapted to replace and add links on a timed basis.

Claim 13 (previously presented):

The system as set forth in Claim 11 wherein said repository synchronizer is further adapted to replace and add links responsive to a request for information from said repositories.

Claim 14 (previously presented):

The system as set forth in Claim 11 further comprising an offer description creator adapted to capture or copy dynamically linked data items to a part number into a second set of descriptive data items which are statically related to said part number.

Claim 15 (previously presented):

The system as set forth in Claim 11 further comprising an offer list creator adapted to create a list of part numbers associated with dynamic links to said data items.

**Evidence Appendix**

*per 37 CFR §41.37(c)(1)(ix)*

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

**Related Proceedings Appendix**

*per 37 CFR §41.37(c)(1)(x)*

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).